

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, OCTOBER 8, 2014**

PRESENT: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
Janet R. Hall, Mason District
James R. Hart, Commissioner At-Large
Ellen J. Hurley, Braddock District
James T. Migliaccio, Lee District
Earl L. Flanagan, Mount Vernon District
Kenneth A. Lawrence, Providence District
Janyce N. Hedetniemi, Commissioner At-Large
Timothy J. Sargeant, Commissioner At-Large

ABSENT: John C. Ulfelder, Dranesville District
John L. Litzenberger, Jr., Sully District

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The meeting was called to order at 8:16 p.m. by Chairman Peter F. Murphy in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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Commissioner Flanagan announced his intent to defer the decision only on application SE 2014-MV-017, Verizon Virginia, LLC, to a date certain of Thursday, October 15, 2014.

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Chairman Murphy announced his intent to defer the public hearing for application PA 2013-III-FC1 (A) S13-III-FC1, Fairfax Center Area, to a date certain of Wednesday, November 12, 2014.

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Commissioner Lawrence announced that the Planning Commission's Tysons committee would meet on Thursday, October 9, 2014, at 7:00 p.m., in the Board Conference Room of the Fairfax County Government Center, adding that everyone all would be welcome to attend.

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ORDER OF THE AGENDA

Secretary Hall established the following order of the agenda:

1. SE 2014-SU-021 – GAY ANN SCHULTE d/b/a MS. GAY'S DAY CARE
2. SE 2014-MV-014 – FOZIA HUSSAIN/KIDS CLUB INFANT DAY CARE, LLC
3. SEA 2011-MV-002 – UZMA TANVEER BUTT/SUNNY DAY CARE ONE, LLC

This agenda was accepted without objection.

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SE 2014-SU-021 – GAY ANN SCHULTE d/b/a MS. GAY’S DAY CARE – Appl. under Sect. 6-105 of the Zoning Ordinance to permit a home child care facility. Located at 5874 Linden Creek Ct., Centreville, on approx. 8,174 sq. ft. of land zoned PDH-4 and WS. Tax Map 53-2 ((7)) 23. PUBLIC HEARING. SULLY DISTRICT.

Gay Ann Schulte, Owner, Ms. Gay’s Day Care, reaffirmed the affidavit dated May 21, 2014.

There were no disclosures by the Commissioners.

Commissioner Hart asked that Chairman Murphy ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived and the public hearing closed. No objections were expressed; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Hart for action on this case.

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Chairman Murphy: Public hearing is closed; recognize Mr. Hart.

Commissioner Hart: This is a very straightforward case and it has staff’s favorable recommendation, and it also has the support of the West Fairfax County Citizens Association. And for the reasons in the staff report, I WOULD MOVE THAT WE RECOMMEND APPROVAL TO THE BOARD OF SUPERVISORS OF SE 2014-SU-021, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED SEPTEMBER 23, 2014.

Commissioners Sargeant and Hall: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Ms. Hall. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-SU-021, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The motion carried by a vote of 10-0. Commissioners Litzenberger and Ulfelder were absent from the meeting.

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SE 2014-MV-014 – FOZIA HUSSAIN/KIDS CLUB INFANT DAY CARE – Appl. under Sect. 6-105 of the Zoning Ordinance to permit a home child care facility. Located at 8156 American Holly Road, Lorton, on approx. 9,023 sq. ft. of land zoned PDH-4. Tax Map 107-1 ((5)) (C) 11. PUBLIC HEARING. MOUNT VERNON DISTRICT.

Fozia Hussain, Owner, Kids Club Infant Day Care, reaffirmed the affidavit dated May 28, 2014.

There were no disclosures by the Commissioners

Nicholas Rogers, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of application SE 2014-MV-014.

Commissioner Flanagan asked if county staff had received an email from the Mount Vernon District homeowner associations (HOA) stating that it had no objections to this application. Mr. Rogers said he had. Commissioner Flanagan stated that the South County Land Use Committee had deferred to the HOA and did not take a position either for or against the application.

Commissioner Flanagan asked if applicant, Ms. Hussain, was the original owner of the house where the daycare was located. Mr. Rogers said that she was not. In addition, he asked if there was a kitchen in the basement and whether there was a permit on record for its installation. Mr. Rogers confirmed that there was a kitchen, but no record of a permit existed for its installation. Commissioner Flanagan asked whether a second kitchen was permitted in a daycare setting. Mr. Rogers confirmed that it was; however, an inspection and permit was required prior to approval of the childcare service. Commissioner Flanagan noted that previously childcare services had been allowed to continue with a second kitchen under the condition that either the kitchen be removed upon resale or the childcare facility ceased to operate at that location. Mr. Rogers acknowledged that some providers might operate under such conditions, but added that there were many ways that county staff could ensure that daycare facilities obtained the required permits.

William O'Donnell, ZED, DPZ concurred with Mr. Rogers' remarks and explained that staff had gone through each case to assess the use of the second kitchen. He said that it was part of the Special Exception in this application and said that staff was comfortable with it.

When Commissioner Flanagan asked about the addition of children without the applicant having the required inspection permits, Mr. Rogers explained that the applicant would be permitted to increase the number of children; but, the development conditions specified that the applicant must apply for the permits within 30 days after approval of the Special Exception and obtain the final inspections and approvals for all applicable trade permits associated with the food preparation area within six months. Mr. Rogers added, however, that if the Planning Commission did not want the number of children to be increased until after the approvals were obtained, he suggested that the applicant might be open to revisions of the development conditions.

Commissioner Flanagan suggested to defer the decision on the application to revise the condition language, Mr. Rogers concurred.

Commissioner Hart explained the childcare cases as they went through the Board of Zoning Appeals (BZA), noting that many that the Board heard were not safety related while others were. He pointed out that this case, however, was safety related because no one knew whether the wiring and/or plumbing had been safely installed. In addition, he noted that the county inspection tended to be more stringent than the state inspections. Consequently, he stated that if the Planning Commission were to be one of the final stops prior to approval, then it must take the steps to ensure that the home was safe before more children were allowed in. He stated that he could not support an approach that allowed an applicant to operate without the proper approvals.

Commissioner Migliaccio asked when staff discovered that the second kitchen was not approved. Mr. Rogers stated that staff had performed a site visit in May and discovered in June that there was no permit for the second kitchen. Commissioner Migliaccio pointed out that this home childcare, as well as several others in the county, had been cited for having 13 children and asked if that had been taken into consideration by staff. Mr. Rogers stated that staff was aware of the violations; however, he said that staff looked only at the land use issues prescribed in the Zoning Ordinance.

Commissioners Hall, de la Fe and Migliaccio all noted that the applicant should not be allowed to increase the number of children until the safety issues were resolved.

Commissioner Hurley pointed out that while she appreciated the difference between administrative and safety issues, she was concerned about leaving parents without childcare, particularly in home childcares with 12 children that would be told to decrease the number of children to 7 until the safety compliance measures were met. She requested that staff consider the parents of those children and suggested that the homes with 12 not be asked to cut the number to 7. She then referenced the public hearing regarding home childcare providers and noted the speakers who provided 24-hour and 7-day care and asked if staff had seen any of those cases yet. Mr. Rogers said that those applications were rare and that virtually all of the cases had standard daytime work hours.

Commissioner Hurley asked if an applicant would need to go through another application process to increase the hours. Mr. Rogers said yes. Commissioner Hurley suggested that staff work with applicants to provide that option upfront to avoid the additional process.

Commissioner Sargeant asked Mr. Rogers if county staff had clearly told Ms. Hussain that there were issues that needed correction prior to approval of the application. Mr. Rogers said that Ms. Hussain was told that there was no permits on record for the second kitchen. When Commissioner Sargeant asked if it might not have been worth explaining to her that it had to be rectified in order to move forward, Mr. O'Donnell explained that staff would be more proactive with future applicants.

Commissioner Migliaccio noted that the permitting process needed to be expedited. Mr. Rogers pointed out that much of what had been discussed this evening had in part already been implemented. He added that home childcare providers had been provided a point of contact

within the Department of Public Works and Environmental Services, who had been working with them to answer questions regarding second kitchens. Commissioner Migliaccio suggested that commissioners might need to talk to their supervisors in order to mitigate some of the communications issues that might occur prior to the public hearing.

Commissioner Sargeant pointed out that, if the fire marshal could not be engaged quickly, the best solution might be as simple as turning off all of the utilities that run to the second kitchen in the basement to render it unusable. Mr. Rogers said that county staff were available, adding that he would be happy to engage them. Commissioner Sargeant added that shutting the kitchen down would be a temporary, but more immediate, solution to the problem.

Commissioner Flanagan asked if the daycare would be shut down if a county inspector were to find the kitchen being used. Mr. O'Donnell explained that while a fire marshal might be able to shut it down, a county inspector would more likely issue a zoning violation. Commissioner Flanagan stated that he agreed with Commissioner Sargeant's suggestion to shut down the basement kitchen. He then asked about one of the photos in the staff report showing nine cribs and asked if the applicant was using all of them. Mr. Rogers noted that when the application was submitted the applicant was operating under a state license that allowed 12 children; however, that was no longer the case and the applicant's current license permitted 7 children.

Ms. Hussain explained that she had worked in Fairfax County for 10 years and had a state license for 12 children. She explained that when she moved into her current residence, she was told by a county inspector that she was not in compliance with the county's Zoning Ordinance and decreased the number of children from 12 to 7. She stated that the second kitchen in the basement comprising a sink, microwave, and cabinets, had existed when she purchased the home and was unaware it was unpermitted. She added that when she tried to apply for the permit for the kitchen, she was denied and told that it could not be approved until the Special Exception was approved.

Commissioner de la Fe asked her if she needed to prepare food in the second kitchen. Ms. Hussain explained that she prepared all food in the main kitchen upstairs, adding that she would be happy to remove the microwave from the second kitchen.

Commissioner Hart pointed out to Ms. Hussain that the wiring needed to be inspected for safety and suggested that she contact Mr. Rogers to determine who to talk to regarding how to go about having the kitchen inspected as soon as possible.

Commissioner Sargeant reiterated to Ms. Hussain his suggestion of closing down the kitchen altogether by simply tripping the circuit breaker.

Commissioner Lawrence identified three options for the second kitchen: 1) get rid of the second kitchen; 2) permit the second kitchen; or 3) do something to the second kitchen, thereby rendering it safe for use. He said he could support any of those options.

Commissioner Flanagan asked how many children Ms. Hussain currently had in her care. Ms. Hussain stated that she had three. Commissioner Flanagan noted his discomfort with basement childcare uses, adding that it was difficult to get children out of the windows.

Chairman Murphy called for speakers, but received no response; therefore, he noted that a rebuttal statement was not necessary. He then called for concluding remarks from the Planning Commission.

Commissioner Hart addressed Commissioner Hurley's remarks regarding extended hours and said that the BZA (Board of Zoning Appeals) had approved one home childcare with extended hours, noting that it was for emergency situations. He pointed out, however, that the hours were usually stated in the application and that unless they were extended in the state's application, the BZA generally did not permit it.

There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Flanagan for action on this case.

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Chairman Murphy: Public hearing is closed; recognize Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. Well, I think we've had a very good hearing and the commissioners have been most helpful. I'd like to express my appreciation for all of your good comments. The – and not only that, but the staff, I think, has come up with a - a couple of changes to the conditions, you know, that I think are a good starting point, and I hope that we would be able to have a revised - revised conditions for the Planning Commission to act on by next week, October 15. That would still make it possible for us to make the 28th, the date before the Board of Supervisors, but if it's not, if we still are hung up in some fashion, I think there will still be room, you know, for us to even defer it even beyond that. If that's – if that's what it's going to take, I think that I may just defer it when we get to the 15th again. But with that said, I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT FOR SEA 2011-MV-002 [sic] – is that right?

Chairman Murphy: No.

Chairman Murphy: oh, it's -00, it's -014.

Commissioner Hart: That's the other one; -002 is the other one.

Commissioner de la Fe: That's the other one. This is the -014.

Commissioner Flanagan: This is -014, okay -- -014 TO A DATE CERTAIN OF OCTOBER 15, 2014.

Commissioner Lawrence: Second.

Chairman Murphy: Seconded by Mr. Lawrence. Is there a discussion of the motion? All those in favor of the motion to defer decision on SE 2014-MV-014 to a date certain of October –

Commissioner Flanagan: Fifteenth.

Chairman Murphy: – fifteenth, with the record remaining open for comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The motion carried by a vote of 10-0. Commissioners Litzenberger and Ulfelder were absent from the meeting.

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SEA 2011-MV-002 – UZMA TANVEER BUTT/SUNNY DAY CARE ONE, LLC – Appl. under Sect. 6-105 of the Zoning Ordinance to amend SE 2011-MV-002 previously approved for a home child care facility to permit an increase in children and associated modifications to the development conditions. Located at 8740 Talbott Farm Dr., Alexandria, on approx. 4,150 sq. ft. of land zoned PDH-5, CRD, and HC. Tax Map 110-1 ((27)) 11A. PUBLIC HEARING. MOUNT VERNON DISTRICT.

Uzma Tanveer Butt, Owner, Sunny Day Care One, LLC, reaffirmed the affidavit dated January 18, 2014.

There were no disclosures by the Commissioners.

Nicholas Rogers, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of application SEA 2011-MV-002.

Commissioner Hart pointed out that, given the discussion that took place during the public hearing for SE 2014-MV-014, Fozia Hussain/Kids Club Infant Day Care, he suggested that Development Condition Numbers 17 through 20 be revised to ensure that no increase in children would be permitted until all inspections and permits were obtained and safety measures were determined to be in compliance. Commissioner Hart asked Mr. Rogers if the second kitchen was the only issue with this application. Mr. Rogers confirmed that it was. Commissioner Hart asked whether there was a mesh grate covering the opening of the stormwater structure in the rear yard. Mr. Rogers said yes. When Commissioner Hart asked if the development conditions addressed the structure, Mr. Rogers said that staff had removed the original development condition language addressing the structure since the structure had been safely covered; however, he stated that the language would be included to ensure that its safe enclosure would be addressed no matter who owned the property.

Referencing Development Condition Number 9, Commissioner Hart asked if the applicant had been using a part of the home improperly. Mr. Rogers explained that Ms. Butt had baby cribs located in a small room in the lower level of her home, adding that after working with the county's code compliance staff, she had since removed them and ensured that the facility met the egress standards of the *Virginia Code*. When Commissioner Hart stated that the condition was vague, Mr. Rogers said that he would work on more specific language. Commissioner Hart noted that while this application was in Mrs. Butt's name, there was a companion Special Permit application in her spouse's name, and pointed out that the Zoning Ordinance required that the applicant reside in the facility. Mr. Rogers stated that staff verified that each party lived in his/her respective facility.

Commissioner de la Fe recalled the original Special Exception (SE) application and said that Development Condition Number 14, in Appendix 5, addressed its enclosure.

Commissioner Hall asked when the last time the stormwater structure had been examined, pointing out that there might be issues under the structure that could be in need of repair. Vice Chairman de la Fe noted that the applicant would address that during her presentation. Commissioner Hall then asked how the mesh screen was attached to the structure. William O'Donnell, ZED, DPZ, stated that it was attached with stakes through the concrete at the bottom of the structure. Commissioner Hall suggested verification to ensure that the mesh was secure and there was no erosion.

Commissioner Sargeant noted that the application referenced one assistant and asked what the regulation stated in regard to the number of assistants. Mr. Rogers explained that Ms. Butt assured staff that she needed only one assistant, adding that there was a point system based on the children's age that dictated the number of caregivers required at a home childcare. Commissioner Sargeant asked what the requirement was for enclosed play areas. Mr. Rogers said that the Zoning Ordinance prescribed the fencing parameters and noted that staff was satisfied with the applicant's fencing. Referencing Development Condition Number 16, regarding the number of children in the play area, Commissioner Sargeant asked why the owner's children were excluded. Mr. Rogers explained that the language was intended to mirror the language in the Zoning Ordinance regarding the maximum number of children a provider might have.

Commissioner Sargeant asked whether there were state and/or local provisions regarding ventilation. Mr. O'Donnell noted that county inspectors would look to ensure that there was a clear path to the system. Commissioner Sargeant expressed concern that more would not be done to ensure that those systems were well maintained, considering the dangers of carbon monoxide poisoning.

Commissioner Hurley suggested more flexibility in the development conditions, particularly with regard to drop-off and pickup times. Referencing Development Condition Number 16, she asked if the provider's children included grandchildren, adopted children, and stepchildren. Mr. O'Donnell said that he was not sure if it would. Commissioner Hurley requested clarification during the deferral.

When Commissioner Hurley asked why there was a fence around the stormwater structure, Vice Chairman de la Fe stated that it was required as part of the original development conditions. Commissioner Hurley noted that children would be running through the rear yard and requested that staff consider installing padding on the metal enclosure around the stormwater structure to alleviate bruising.

Commissioner Flanagan asked staff if the current conditions were the same as those in the original Special Exception application. Mr. Rogers explained that only the conditions with stars before them had been carried over from the original application; therefore, Development Condition Numbers 4, 6, 7, 9, 10, 12, and 17, 18, 19, and 20 were new. Vice Chairman de la Fe added that Appendix 5 contained all of the original development conditions.

Commissioner Hall referenced a slide in staff's presentation and asked what one of the buildings in the rear yard was. Mr. Rogers stated that it was a playhouse. Commissioner Hall pointed out that it was not on the SE plat and expressed concern about its safety, not only as a play structure, but also with regard to being able to see the children. Mr. Rogers stated that he would work with the applicant to more specifically identify the permanent play equipment in the yard.

Commissioner Hart pointed out that if the structure were a shed it would need to be added to the SE plat as an accessory structure, adding that staff accepted written markups. He also noted that sheds were often located in play areas, but they must be secured and locked to prevent children from gaining access.

Ms. Tanveer said that the structure was a clubhouse and said that she preferred to remove it from the yard. She added that she had recently installed a new drainage pipe under the stormwater structure and covered the area with concrete to eliminate issues that were caused by the water, noting that the area was now dry.

Commissioner Hurley referenced Question Number 7 of the Drop Off/Pick Up Policy in Appendix 2, Attachment 1 of the Staff Report and noted that having parents making phone calls while driving in rush hour traffic might not be appropriate. Ms. Butt explained that she knew the parents' schedules well and would often have the children ready for pickup without phone calls from the parents. She added that she received phone calls only when parents called to say that they would be late.

Commissioner Hart said that the clubhouse might not need to be removed but reiterated that it would need to be added to the SE plat. He added that adding it to the drawing would be relatively easy and suggested that Ms. Butt contact staff for help. He asked Ms. Butt if she understood everything that needed to be done with regard to the second kitchen and she replied that she did.

Commissioner Flanagan asked Ms. Butt if she added the second kitchen to the residence after she moved in. She said no.

Vice Chairman de la Fe asked Ms. Butt to verify that her husband had submitted a Special Permit application in another location, which Ms. Butt did. Vice Chairman de la Fe asked staff if Mrs.

Butt's application on this Special Exception Amendment would be affected by the fact that it was Mr. Butt who had filed the original Special Exception application. Mr. O'Donnell stated that as long as Mrs. Butt could demonstrate that the authority to file the application for that property, she could do so, as the SE ran with the land. Mr. Rogers added that Ms. Butt had provided documentation proving that she had the legal authority to file an application..

Vice Chairman de la Fe called for speakers from the audience, but received no response. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Vice Chairman de la Fe closed the public hearing and recognized Commissioner Flanagan for action on this item.

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Vice Chairman de la Fe: The public hearing is closed. This is in the Mount Vernon District.

Commissioner Flanagan: Well... if there's any comments from the Commissioners –

Vice Chairman de la Fe: I think we've made enough. I think we've made enough.

Commissioner Flanagan: We've made enough? Okay, very good. As long as you're sure you're completely satisfied. And once again, I'm going to count upon the staff to have this application and the adjustments made, you know, that we talked about this evening, during the next week. And we'll defer this until the 15th and then my understanding is that that will still make it possible for the Board to act on it on October 28th.

Nicholas Rogers, ZED, DPZ: We'll work with you and update you on our progress and – and if additional time is needed to resolve the various issues that you've highlighted tonight, we'll work with you and continue forward, if need be.

Commissioner Flanagan: I mean, by the way, I will be much interested in knowing whether there is any plumbing or that - - anything of that sort installed for which there have been no building permits issued. And I will - - so we may get rid of, you know, some of this language in the process. Okay, with that Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENTS FOR SEA 2011-MV-002 TO A DATE CERTAIN OF OCTOBER 15, 2014.

Commissioners Hall and Lawrence: Second.

Vice Chairman de la Fe: Seconded by Mrs. Hall and Mr. –

Commissioner Lawrence: What's his name.

Vice Chairman de la Fe: What? Mr. Lawrence. Any – any comments? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? Motion carries.

The motion carried by a vote of 9-0. Commissioner Murphy was not present for the vote. Commissioners Litzenberger and Ulfelder were absent from the meeting.

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The meeting was adjourned at 10:06. p.m.
Peter F. Murphy, Chairman
Janet R. Hall, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Jeanette Nord

Approved on: May 6, 2015



John W. Cooper, Clerk to the
Fairfax County Planning Commission

